

House of Representatives

Supplementary Order Paper

Tuesday, 27 November 2012

Local Government Act 2002 Amendment Bill

Proposed amendments

Hon Annette King, in Committee, to move the following amendments:

New clause 17A

After clause 17 (after line 10 on page 11), insert:

17A New section 43A inserted (Financial management guidelines for local authorities)

After section 43, insert:

“43A Financial management guidelines for local authorities

- “(1) The Auditor-General must issue, and regularly update, guidelines for local authorities on responsible financial management.
- “(2) The Auditor-General must, without limitation, consult the following people and groups when developing the guidelines and before making any major amendments to the guidelines:
- “(a) every local authority;
 - “(b) persons or organisations representing local authorities, including organisations representing members of staff of local authorities.
- “(3) A current version of the guidelines must be provided to every local authority and be made publicly available on the website of the Office of the Auditor-General.”

Clause 22

Delete clause 22 (line 26 on page 27 to line 37 on page 28).

Clause 24

Delete clause 24(5).

Clause 27

In clause 27, after subsection (2) (after line 10 on page 33), insert:

- (3) Local government reform must comply with the following principles:
 - (a) it must be evidence-based, have a clear and robust rationale, and be derived following consideration of key options and what each would achieve;
 - (b) it must provide for good governance and be capable of adapting to meet immediate needs as well as long-term needs;
 - (c) it must foster integrated planning and decision-making, respect and accommodate diversity, and be responsive to different groups and local communities;
 - (d) it must ensure that, where practical, decisions are made nearest to the communities they benefit or impact;
 - (e) it must provide a clear transition path for organisations and communities.
- (4) Any local government reform process must—
 - (a) involve consultation with all affected parties, including stakeholders and staff, at the start of the process and during the process of change, conducted on the basis of trust and good faith in negotiations; and
 - (b) not be forced on communities without always giving citizens a final say in a referendum; and
 - (c) be guided by a realistic timetable for change, including planning and consultation.

Explanatory note

This Supplementary Order Paper amends the Local Government Act 2002 Amendment Bill.

This Supplementary Order Paper also deletes clause 22(1) of the Bill, which proposes a new regulation-making power for the following purposes:

- prescribing parameters or benchmarks for assessing whether a local authority is prudently managing its revenues, expense assets, liabilities, investments, and general financial dealings;
- prescribing the manner in which a local authority must disclose, in 1 or more of its long-term plan, annual plan, and annual report,—
 - the planned performance of the local authority against parameters and benchmarks prescribed in regulations under paragraph (dc); and
 - the actual performance of the local authority against parameters and benchmarks prescribed in regulations made under paragraph (dc).

This Supplementary Order Paper includes the following consequential amendments:

- deleting provisions outlining how the proposed regulation-making power under *section 259(1)(dc)* may be exercised (clause 22(2), *new section 159(3)* of the Bill):
- deleting provisions outlining who may be consulted before the Minister recommends that such regulations are made (clause 22(2) *new section 159(3)* of the Bill):
- deleting clause 22A, which requires the Auditor-General to report on disclosures made pursuant to the proposed regulation-making power (ie, in new section 259(1)(dd)).

This Supplementary Order Paper replaces the proposed regulation-making power with a requirement for the Auditor-General to issue guidelines about responsible financial management for local authorities. These guidelines and any major revisions must be developed in consultation with local authorities and organisations representing local authorities and their staff (for example, the New Zealand Public Service Association, Local Government New Zealand and New Zealand Society of Local Government Managers). In addition, a current version of the guidelines must be made available to local authorities and published on the website of the Office of the Auditor-General.

These changes are necessary because there is no evidence to show that there is a significant problem with financial management by local authorities or that the current measures, such as oversight by the Auditor-General, are failing to manage any issues that may arise. However, there are likely to be further improvements in the performance of local authorities' fiscal management from the Auditor-General issuing specific guidance on financial management for local authorities, in consultation with the sector. These guidelines should be kept regularly updated to ensure that any developments are incorporated and that the guidance remains relevant.

This Supplementary Order Paper deletes clause 24 (new clause 36A to Schedule 7), which would enable a local authority to set, adopt and review policies of the local authority relating to employee staffing levels and the remuneration of employees.

This Supplementary Order Paper is consistent with practice in the wider state sector: that elected representatives have responsibility for the strategic plans, policy direction and overall budget of public bodies (in this case local authorities), while the chief executive, appointed by the elected members of the local authority, is responsible for the implementation and operation of those plans and policies within the agreed budget. This includes making the necessary employment decisions about staff numbers and the terms and conditions of employment, with due regard to statutory obligations, such as being a "good employer" and acting in "good faith". Significantly, the clause does not propose that the Council be bound by such considerations when drafting employment policies, which is likely to lead to an inadvertent breach of these obligations.

Councils already have responsibility for approving the budget for the local authority, including the overall budget for salaries and remuneration of staff, but individual judgments about staff remuneration and allocation continue to be made by the Chief Executive, with proper regard given to the statutory obligations of the local authority. The proposed additional power for Councils to make policies on employee numbers and remuneration overlaps with the operational decisions of the Chief Executive.

There is no evidence to show that this additional power is necessary or that employee numbers at local authorities have increased in response to anything other than population and economic growth and new legislative functions determined by central government. However, there is a significant risk that the new policy-making power proposed in this clause will lead to perverse behaviours and unintended consequences, such as contractors being hired to fill the role previously discharged by employees without the benefit of institutional knowledge and at greater expense to residents and rate payers (as recognised in the Regulatory Impact Statement to the Bill).

Clause 27 is amended to provide transitional provisions prescribing requirements for any local government reform process.
